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19 DEC 2005

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In re Application of	:	
SAUNDERS, Ian	:	
U.S. Application No.: 10/510,082	:	
PCT No.: PCT/NL03/00247	:	DECISION ON PETITION
Int. Filing Date: 02 April 2003	:	UNDER 37 CFR 1.47(b)
Priority Date: 02 April 2002	:	
Attorney Docket No.: 060327-5002	:	
For: STAGE DEVICE FOR A VACUUM	:	
CHAMBER	:	

This decision is in response to applicant's "Petition By Person Having Proprietary Interest to File Application on Behalf of Inventor Who Cannot Be Found" which is being treated as a petition under 37 CFR 1.47(b) filed 11 May 2005 to accept the application without the signature of the sole inventor, Ian Saunders. The \$200 petition fee has been submitted.

BACKGROUND

On 02 April 2003, applicant filed international application PCT/NL03/00247 which claimed a priority date of 02 April 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 09 October 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 02 October 2004.

On 01 October 2004, applicant filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a copy of the international application.

On 07 March 2005, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 11 May 2005, applicant filed the present petition under 37 CFR 1.47(b).

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17; (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of items (1) and (6). However, items (2); (3); (5) and (6) have not been satisfied.

As to item (2), petitioner states that Ian Saunders cannot be found or reached after diligent effort. Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where inability to find or reach a nonsigning inventor "after diligent effort" is the reason for filing under 37 CFR 1.47, a statement of facts should be submitted that fully describes the exact facts which are relied on to establish that a diligent effort was made.

The statement of facts must be signed, where at all possible, by a person having firsthand knowledge of the facts recited therein. Statements based on hearsay will not normally be accepted. Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included statement of facts. It is important that the statement contain facts as opposed to conclusions.

A review of the present petition reveals that petitioner has not provided an acceptable showing that a diligent effort was made to locate the nonsigning inventor, Ian Saunders. Petitioner has provided a copy of the cover letter and mailing label addressed to Mr. Saunders mailed May 4, 2005 via DHL Overnight Delivery. However, it is unclear as to the delivery status of the letter. Was the registered letter returned as undeliverable? Further, it appears that the application papers were mailed to Mr. Saunders' corporate address. In this situation, the application papers should be submitted to the inventor at his last known residence home address to insure receipt. Has petitioner attempted to locate Mr. Saunders' last known residence address? (See MPEP §605.03)

Regarding item (3) above, a clear statement of the last known address of the nonsigning inventor has not been provided. In situations where an inventor does not execute the oath or declaration, the inventor's address should be the last known address at which the inventor customarily receives mail. (See MPEP §605.03) Ordinarily, the last known address will be the last known residence of the nonsigning inventor. (See MPEP §409.03(e))

Regarding Item (4), an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor has not been provided.

Concerning Item (5), petitioner has not demonstrated that applicant has a propriety interest in the invention. (See M.P.E.P., §409.03(f))

For the reasons stated above, it would not be appropriate to accept the application without the signature of Ian Saunders under 37 CFR 1.47(b) at this time.

CONCLUSION

The petition under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to: Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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